Housing and building codes

Overview

State and local governments adopt housing and building codes to ensure safe and healthy homes.

Housing and building codes are usually comprehensive and authorize departments and agencies to take enforcement action against threats to the collective health or welfare of a community. Housing codes set minimum standards for housing conditions that all rental housing, new or existing, must meet to protect the health of residents. Some jurisdictions refer to them as property maintenance codes or sanitation codes, but their functions are the same. Building codes set the standards for the design and construction of buildings. The main purpose of building codes is to protect the public from the health and safety risks posed by improperly constructed buildings. Building codes provide minimal standards for building features such as structural integrity (the supporting structure), mechanical integrity (including sanitation, water supply, light, and ventilation), means of egress, fire prevention and control, and energy conservation.
Housing codes
Housing codes are typically enacted at the municipal level, although codes have also been adopted at the state level, such as in Massachusetts and California. Housing codes set the minimum standards for the conditions of rental properties through a lengthy list of highly specific provisions. These include, for example, minimum levels of heat, requirements for the provision of plumbing and hot water, and prohibitions of rodents and insect infestations. Standards also typically include requirements for facilities such as kitchens and bathrooms. It is generally considered the obligation of the landlord to achieve compliance, although tenants are also usually required to maintain the premises in a clean condition and to refrain from causing damage to fixtures, appliances, and systems.

Oversight and enforcement
Housing codes typically authorize a local administrative agency, such as a department of housing or health, to oversee compliance through a variety of enforcement mechanisms. The codes set forth a schedule of financial penalties for violations of the code. Owners are typically provided notice and a time period to make repairs before financial penalties are issued. The amounts of the penalties usually accord with the severity of the violations, with higher financial penalties provided for violations more seriously affecting health and safety. Financial penalties are often issued on a daily rate, with penalties accumulating for each day of noncompliance. Some jurisdictions specify a maximum cap on financial penalties. Some housing codes also authorize criminal sanctions in the event of willful or intentional noncompliance. There are two primary models of housing code enforcement: facilitative enforcement and deterrence-based enforcement. Under a facilitative model, the code enforcement agency focuses on supporting the building owner in getting repairs made, which emphasis on flexibility. Under a deterrence model, the code enforcement agency levies increasingly severe fines and other sanctions against building owners, and treats these as incentives to encourage compliance.

Coverage
Some housing codes only apply to certain types of rental housing, such as multifamily dwellings. Whether municipalities may decide the scope of coverage in their housing codes depends on whether the code is enacted at the state or municipal level, and if there is a state code, whether that code allows for deviation. Housing codes tend to apply to apartment buildings, duplexes, rented single family units, and residential hotels/rooming houses, but tend not to apply to owner occupied units, vacant properties, and housing accommodations in hotels, motels, inns, or tourist homes.
Building codes

Building codes are adopted at the state, county, and city levels and generally apply only to new construction or to the rehabilitation of existing structures. Building codes generally include minimum construction standards, requirements for construction materials, fire and health restrictions, building access and American Disability Act compliance standards, and minimum qualifications for individuals or corporations doing the work. Building codes are generally separate from zoning ordinances, but some issues may fall within both sets of regulations, such as fencing restrictions.

Most building codes have grandfathering provisions such that the code does not apply to existing buildings unless they are undergoing renovations. Rather than create and maintain their own codes, the overwhelming majority of localities have adopted one of two model building codes. One building code is created and maintained by the International Code Council (ICC), and the other by the National Fire Protection Association (NFPA). Both organizations update their codes every three years. (To keep local jurisdictions informed about changes to their model codes, both the ICC and the NFPA offer a free electronic newsletter on the latest code developments.) The ICC is generally supported by architects and owners and managers of buildings, and the NFPA is generally supported by fire chiefs and trade unions.

All fifty states and the District of Columbia have enacted the one of the two versions of the model codes at the state or jurisdictional level. Jurisdictions must choose which model to adopt, and that choice may be the subject of intense political debate, involving lobbyists from both sides. The City of Chicago is the only municipality that continues to use a building code it developed on its own called the Municipal Code of Chicago. Yet while the model codes serve as the basis for nearly all building codes, jurisdictions typically make modifications based on local preferences and conditions. Whether to deviate from the model code, and to what extent, should be based in part on feedback from the local builders and developers which can be obtained directly, through their trade associations, or by establishing a commission.

The degree of flexibility available to localities to modify their building codes depends on federal and state law. In general, there is a presumption that federal statutes do not preempt building codes, as building codes are traditionally a matter of state and local law. However, there are some instances in which Congress, in enacting a statute, expresses a “clear and manifest” purpose that the statute preempt state and local building codes, and in these instances federal courts have struck down local and state codes that conflict with the federal law. A recent example is the Energy Policy and Conservation Act, which establishes nationwide energy efficiency standards for certain residential home appliances, and expressly preempts state or local standards.
requiring greater efficiency than the federal standards (although the statute makes a specific exception for certain building codes designed to promote energy efficiency).

Whether a local government may deviate from a state building code in its municipal code depends on the structure of the state code and the municipal governance structure of the state. For example, the California state building code limits the ability of local governments to amend the code. In Maryland, by contrast, a home rule state, local jurisdictions may freely modify the building code to suit local conditions (except for aspects of the code related to energy and accessibility).

**Oversight and enforcement**

Local building departments enforce building codes. When new construction or renovation is being undertaken, owners submit plans to the building department, the department decides whether to issue a permit, and then inspectors employed by the building department verify compliance. Owners who violate building codes are subject to the assessment of fines, typically after being given notice and time to correct. Penalties may be calculated based on a number of factors including the nature of the violation, the time period of noncompliance, and how cooperative the owner has been in working with the department of buildings to achieve compliance. Some jurisdictions also authorize other types of fees for violations, such as investigation fees.

In order to ensure compliance with building codes, enforcement agencies must build the private sector’s commitment to voluntarily comply with code standards, attain adequate capacity, and become internally committed to vigorous enforcement. Much like in the housing code context, there are two competing philosophies to obtaining voluntary code compliance: deterrence and facilitation. Enforcement models based on the deterrence perspective typically involve frequent inspection of construction activity, uniform and strict application of code and permit requirements, and the use of severe sanctions (such as stop work orders and fines) to deter violations. Enforcement models based on the facilitative perspective focus on achieving voluntary compliance through good working relationships with designers and contractors. Under these models, the enforcement agency uses general, flexible guidelines in assessing compliance (focusing on achieving enforcement goals rather than the strict letter of the law), offers incentives such as relaxed inspection schedules and leniency when violations are detected in order to reward those who make a good faith effort to comply, and provides technical assistance to improve the capacity of builders and contractors. Under either type of model, in order for a code enforcement agency to have capacity to enforce, it must have adequate staffing (including plan checkers, building inspectors, and support personnel), technical expertise, and legal support.
Other laws and regulations related to housing and building codes

The Uniform Residential Landlord and Tenant Act (URLTA) was drafted by the Uniform Law Commission in 1972 and has since been adopted by 21 states. Section II of the URLTA imposes property maintenance obligations on both landlords and tenants. It requires landlords to “comply with applicable building and housing codes affecting health and safety” and similarly requires tenants to “comply with all obligations primarily imposed upon tenants by applicable building and housing codes.” Section III of the URLTA contains separate provisions related to property maintenance. It requires the landlord to maintain the premises by, inter alia, making all repairs and doing whatever is necessary to keep the premises in a fit and habitable condition; keep all common areas safe and clean; maintain electricity, heating, and ventilation; and supply running water and reasonable amounts of hot water. It then requires the tenant to use the premises in a reasonable manner; not deliberately or negligently destroy or damage the premises; keep the part of the premises he or she occupies and uses as clean and safe as possible; and keep all plumbing as clear as possible. The Section 8 Housing Choice Voucher program regulations at 24 CFR Part 982 set forth minimum housing quality standards (HQS) that all units must meet in order for assistance to be paid on behalf of the voucher-holder. Current HQS regulations are categorized into 13 key areas of housing quality, such as sanitary facilities, thermal environment, and lead-based paint. The regulations also set minimum performance and acceptability criteria for each of the thirteen areas. The HQS requirements apply to all types of housing, including single family and multi-family dwelling units, along with specific requirements for certain housing types such as manufactured homes, congregate housing, single room occupancy, shared housing, and group residences. Public housing agencies conduct HQS inspections when the voucher-holder initially expresses an intention to lease a rental unit, on an annual basis once the unit is leased by a voucher-holder, and in other special circumstances, such as upon receipt of a complaint regarding the unit’s condition. The International Property Maintenance Code is a model code that sets minimum maintenance requirements for existing buildings. It is intended to set minimum standards for basic equipment, light, ventilation, heating, sanitation, and fire safety. Two states – New York and Virginia – and more than 600 local jurisdictions have adopted the International Property Maintenance Code with modifications.

Examples

- The City of Los Angeles enacted the Los Angeles Housing Code in 1998. This Housing Code overlaps with the State Housing Law of California and Civil Code of
California, which also set minimum standards for safety and health in rental properties. The Housing Code applies to all rental properties with two or more units on a lot and where at least one of the units is a rental unit. It states that it is the property owner’s obligation to ensure compliance with the Code, but also requires tenants to keep the premises in clean and sanitary condition. The Los Angeles County District Surveillance and Enforcement is charged with enforcing the Code.

- Several cities, such as Chicago, San Francisco, and Washington, D.C., have made innovative additions to their building codes to enhance the energy efficiency of their buildings. Through the Chicago Energy Conservation Code, the City of Chicago requires residential buildings to comply with energy-efficient measures that go beyond those required by the minimum Illinois Building Energy Code. In San Francisco, the Green Building Code requires all new construction in San Francisco to achieve certain sustainability and energy conservation standards. In Washington, D.C., the city adopted the DC Green Construction Code based on the International Green Construction Code from ICC, which is focused on energy and water conservation. The Green Construction Code is mandatory for all multi-family residential construction for four stories or larger.

Related resources

- Healthy Housing Laws That Work: Creating Effective Implementation & Enforcement Clauses, Change Lab Solutions (2014) – provides an overview of best practices in implementation and enforcement clauses in local housing codes
- Housing Codes, National Center for Healthy Housing – provides links to state and municipal housing codes
- Building Codes, Construct Connect – provides links to state and local building codes
- Building Codes Assistance Project – provides information and resources related to energy codes

See also:

- Code enforcement
- Lead abatement
- Assistance for home safety modifications